

1 IN THE UNITED STATES BANKRUPTCY COURT

2 FOR THE DISTRICT OF MARYLAND

3 NORTHERN DISTRICT

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6 IN RE:)

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10 FRANK'S NURSERY & CRAFTS, INC.)

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12) Case # 01-5-2415-JS

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14 Debtor) Chapter 11

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22 TRANSCRIPT OF PROCEEDINGS

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24 BEFORE THE HONORABLE JAMES F. SCHNEIDER

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UNITED STATES BANKRUPTCY COURT JUDGE

101 West Lombard Street

17 Baltimore, Maryland 21201

February 27, 2001

21 Audio Operator: Susan Fitzpatrick

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2 APPEARANCES

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7 On behalf of the debtors

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9 Sandra Mannocho, Esq.

10 On behalf of the creditors' committee

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15 On behalf of Wells Fargo Retail Finance

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20 On behalf of Hermann Englemann Greenhouses, Inc.

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P R O C E E D I N G S

(10:40 a.m.)

THE CLERK: This is the case of Frank's Nursery and
Crafts, Case No. 01-5-2415.

We're here on Debtor's Estimating Motion for Order,
(A) authorizing payments of certain pre-petition obligations
related to goods in transit; (B) confirming grand administrative
expense status to debtors' undisputed obligations for goods
ordered pre-petition and delivered post-petition, and
authorization for debtors to pay such obligations in the ordinary
course of business; (C) authorizing treatment of return-to-vendor
goods; and (D) granting related relief.

THE COURT: Counsel, please identify yourself and name of
your client for the record.

MR. FLETCHER: Good morning, your Honor. Mark Fletcher and
Kristin Perry, on behalf of the debtors.

MS. MANNOCHIO: Good morning, your Honor. Sandra Mannocho,
on behalf of the official committee of unsecured creditors -- or
actually, Your Honor, the provisional committee of unsecured
creditors.

MS. ALQUIST: Good morning, Your Honor. Nancy Alquist, on
behalf of Wells Fargo Retail Finance.

1 MR. DANEMAN: Your Honor, David Daneman, on behalf of
2 Hermann Englemann Greenhouses, one of the trade creditors.

3 THE COURT: Good morning again to all of you. Mr.
4 Fletcher, we have a number of matters on the docket, and also at
5 some point during this hearing, I hope to provide the parties
6 with a series of dates that we have selected as proposed dates
7 for the debtor to schedule upcoming matters as needed.

8 MR. FLETCHER: That would be wonderful, Your Honor.

9 THE COURT: Very well.

10 MR. FLETCHER: Let me begin today, Your Honor, by updateing
11 the Court. The committee and Wells Fargo have come to agreement
12 with the debtors on the form of an order for today. If I may
13 hand up that form of order?

14 THE COURT: That's fine.

15 MR. FLETCHER: There were three basic sub-parts to this
16 motion, and what the committee and Wells Fargo and the debtors
17 have agreed to do is to defer any final ruling on the
18 return-to-vendor goods portion of the motion, so that the
19 committee can have a couple of extra days to analyze that issue
20 and confer with the debtors.

21 And what we have tried to do in the formal order is build in
22 the flexibility, if the committee comes back and says, okay, we
23 now understand what the debtor's seeking and it makes sense to
24 us, that we can simply submit to Chambers a short form order on
25 that issue, and not have to take up additional court time on that.

1 What this motion involves, Your Honor, is, shortly after the
2 filing, the debtors began getting a number of calls from vendors
3 dealing with two components, really, of their relationship with
4 the debtor. One is the area of goods in transit, where we were
5 informed shortly after the filing that a substantial amount of
6 our goods had been processed or arrived pre-petition at the
7 Customs houses in process, and in light of the bankruptcy had
8 been placed in warehouses, pending the payment of the Customs
9 duties for the imports. And the amount of goods involved is
10 about six million dollars of goods, which we very much need to
11 get out to our stores.

12 As a result of the timing of the filing and when the imports
13 arrived, those goods were impressed with two items: (1) Customs
14 duties, taxes, transportation visa expenses, and potentially
15 warehouse liens -- that would be possessory liens of the
16 warehouses that have custody of them. The amounts involved are
17 relatively modest in terms of expense. We currently estimate
18 that it's about 180 thousand dollars -- excuse me, about 160
19 thousand dollars, of which maybe 80 thousand is for time frames
20 that were shortly pre-petition. The amount of goods involved
21 again is six million dollars.

22 We conferred with the committee on this, and because many of
23 the items are either going to be secured liens, warehouse liens
24 against the goods; or other of the items, such as Customs duties,
25 are priority claims under the Code; and given the nearness of the

1 spring season and the urgency to get the goods out to the
2 shelves, the committee has agreed with the debtors that it makes
3 sense to go ahead and satisfy this relatively small amount of
4 claims, most of which would be secured or priority anyway, and
5 get these goods released and on the shelves.

6 There may be other instances that are going to pop up that
7 we just don't know about yet, and so we have built flexibility
8 into the order that we will pay these items if Wells Fargo and
9 the committee agrees in writing with the debtor. So there's a
10 safety valve there that there's going to be an approval and
11 review process of the actual items.

12 We just need authority to do it, assuming that the committee
13 and Wells Fargo will sign off.

14 THE COURT: I see. Very well.

15 MR. FLETCHER: The next item deals with vendors who received
16 orders pre-petition -- have started growing goods for us,
17 processing goods for us, or were prepared to ship goods to
18 us, but the delivery did not happen pre-petition. And several of
19 those vendors -- one particularly comes to mind is a mulch
20 shipper from the northern-most corner of Maine, I'm told, has
21 literally stopped all transportation of approximately a million
22 dollars in mulch that they ship to us a year, until they can get,
23 quote, a comfort order, that says that if they deliver the goods
24 post-petition on a pre-petition order, it will be a post-petition
25 claim.

1 Now, looking at the Bankruptcy Code, it seems to us rather
2 obvious that that's exactly what the Code provides, that people
3 providing goods and services post-petition have administrative
4 priority claim to the extent that they all get paid in the
5 ordinary course. Nonetheless, for a number of these vendors the
6 filing came as a surprise. They have substantial pre-petition
7 claims, and they're very skittish about shipping into a greater
8 loss.

9 And so, Part 2 of this motion is to get a comfort
10 order, saying basically, just as the Bankruptcy Code says, that
11 for these pre-petition items that were ordered pre-petition but
12 delivered post-petition, they will have the administrative
13 priority provided by the Code, and the debtors do have the
14 authority to pay them in the ordinary course of business.

15 Again, that's more a customer relations comfort order issue
16 than asking for any dramatic relief.

17 The final issue is return-to-vendor goods, and let me just
18 address this, even though we're going to ask the Court to defer
19 ruling on it. The return-to-vendor goods is, with a number of
20 our vendors, particularly with vendors that have goods that have
21 a shortened shelf life-- the one that comes to mind is, for
22 example, seeds-- we have a relationship with those vendors that
23 lets us return unsold portions to them, to be back-credited
24 against the balance due.

25 Well, a number of these vendors who are getting ready to

1 ship to us are concerned that we have these kinds of goods on
2 hand that we're going to return, and we will seek to get a credit
3 against our post-petition shipments for the return goods we have
4 on hand. Again, it's an issue of not wanting to ship into a
5 greater loss.

6 Now, we anticipate simply working out with the lenders an
7 appropriate allocation of the returned goods against our
8 pre-petition claim. Because, frankly, we're returning this
9 because we can't sell it, and it's a burden to have it, but
10 rather than simply abandon it, if we can work out a
11 return-to-vendor arrangement with the lender as we had
12 pre-petition, we at least reduce the pre-petition claim, and help
13 increase to creditors that way.

14 The committee's asked for a few more days to look at this
15 issue and analyze this issue, and again, what the order provides
16 is for the Court to set a follow-up hearing on this, but if we
17 reach agreement before then, we can submit a consent order on
18 this line-up.

19 THE COURT: How soon do you want that hearing set?

20 MR. FLETCHER: My thinking, Your Honor, is that we will be
21 back before the Court, I believe on March 6th?

22 THE COURT: That's right.

23 MR. FLETCHER: For the DIP hearing, and that would be a
24 logical time to have that.

25 THE COURT: That's fine. That's Tuesday, March 6th. at

1 10:00 a.m..

2 MR. FLETCHER: And with that, Your Honor, I'll turn the
3 podium over to Wells Fargo or the committee, in case they have
4 any additional comments or clarifications that should be made.

5 THE COURT: Very well.

6 MS. ALQUIST: Your Honor, Nancy Alquist, on behalf of Wells
7 Fargo. I have nothing to say other than to agree that the form
8 of order has been approved as acceptable to Wells Fargo, and
9 Wells Fargo consents to the entry of the order.

10 THE COURT: Very well. Thank you. And Ms. Mannocho, is
11 there anything you'd like to ask?

12 MS. MANNOCHIO: No, Your Honor. I agree with what Mr.
13 Fletcher has presented to the Court regarding the R.T.V. goods.
14 If the committee has a few more days just to get comfortable with
15 the procedures the debtors are proposing to implement with
16 respect to returning these goods, I'm hopeful we'll be able to
17 submit some sort of consent to the Court.

18 THE COURT: Well, that's fine. The order has been signed
19 and dated today, the 27th of February, 2001, and the date that
20 was left blank for the deferral of the motion respecting the
21 R.T.V. goods has been filled in, and is now Tuesday, March
22 6, 2001, at 10:00 a.m..

23 So the order is now complete. The relief is granted to the
24 extent that the order so provides, and deferred as it provides
25 for a final hearing on the 6th of March.

1 MR. FLETCHER: Thank you, Your Honor.

2 THE COURT: The dates that we have selected to offer to
3 counsel for the debtor for hearings for issues that may arise in
4 the next two to three months -- and we could provide a list of
5 these, but these are the dates so far. Thursday, March 22, at
6 10:00 a.m., which is also a Sunterra day. Some of those days --
7 I think only two of the ones I'm about to give you are ones that
8 are already set aside for Sunterra. Tuesday, April 10 -- all the
9 times are 10:00 a.m.. Thursday, April 26; Tuesday, May 8;
10 Thursday, May 24; and Thursday, June 7. That last one is also a
11 Sunterra day. So these are one, two, three, four, five, six
12 different dates in addition to the one that we have already set
13 on the 6th of March. We have tried to separate these by about
14 two weeks to allow different things to happen in between.

15 If these are acceptable, then we'll do this the same way we
16 have done the hearings in Sunterra, where you do the noticing and
17 we get a list of what's coming up.

18 MR. FLETCHER: Certainly, Your Honor. We appreciate the
19 Court's making these dates available.

20 THE COURT: It seems to have worked fairly well in the
21 Sunterra case, in terms of not having counsel have to call us at
22 every turn for upcoming dates, and then this way we can see how
23 things seem to progress. If you need other dates, obviously
24 we'll try to fill those in.

25 MR. FLETCHER: There are-- I guess there are two scheduling

1 matters, one in connection with Sunterra, that I'd like to bring
2 up to Your Honor, and one in connection with Frank's. I'll begin
3 with Frank's. As Your Honor may recall, on the first day we
4 filed three motions that we did not request first day hearing
5 on, which is -- two of the motions dealt with rejecting leases
6 or contracts.

7 One of the motions dealt with assuming certain sales
8 agreements for approximately ten sales of real estate that we
9 have. The actual closing dates on the sale contracts for some of
10 those sales have passed and for others is approaching very
11 rapidly, and the company has asked us to do two things: one, to
12 keep buyers from walking from sales; and two, to stop the
13 accruing administrative claim for the rejection claims, to see if
14 I can get those set in as soon as possible.

15 THE COURT: All right.

16 MR. FLETCHER: I noticed that we have March 6th available
17 for the final DIP, and material to this, I would ask, Your
18 Honor, that I could notice out the rejection motions for March
19 6th. On the sale motion, ideally, Your Honor, what I'd like to
20 do is set those in for a hearing on March 6th, but that if the
21 debtors and the committee are in agreement on some of those
22 sales, that we be permitted on kind of a one-off basis, to submit
23 consent orders earlier than that, so that sales can begin
24 closing.

25 THE COURT: I don't see any problem with that. Are you

1 going to have enough time, though, for noticing on some of those
2 motions on the 6th? Because that is only going to be about a week
3 from now.

4 MR. FLETCHER: Yeah. What we would have to do, Your
5 Honor, is we would have -- if Your Honor agreed that they could
6 be heard then, we would have to --

7 THE COURT: Exactly a week from now --

8 MR. FLETCHER: We would have to send out a notice to the
9 parties that the debtors have requested and the Court has
10 scheduled a hearing on those matters at that date and time, and
11 should they have any objections they should appear. It is a
12 little bit shortened, but for the parties who were rejecting
13 contracts, I think that the ultimate party in interest there is
14 the committee. And for the sales assumptions, again, we think
15 the ultimate party really is the committee, because the
16 buyer, you know -- the concern is with the buyer -- that they are
17 going to use the delay, use the delay as a reason to walk.

18 So our belief was, if we could get a notice out to these
19 parties that any open sale motions or rejection motions will be
20 heard on the 6th, but that with respect to assuming sales, if the
21 committee signs off before then, and there's no pending
22 objections, the committee and the debtors may submit a joint
23 consent order on particular sales.

24 THE COURT: What about that, Ms. Mannocho?

25 MS. MANNOCHIO: Well, Your Honor, with respect to the

1 assumption of various real estate sales contracts, the committee
2 has requested information from the debtor regarding marketing
3 efforts that occurred pre-petition, and information that supports
4 the sale prices, which the committee believes - with the limited
5 information that it has obtained up to this point, Your Honor
6 -- for why those prices are less than an appraised value. And we
7 have not yet received that information from the debtor, Your
8 Honor, and I'm concerned that, if we aren't able to get that
9 within the next 24 hours, that March 6th may be a little bit
10 aggressive for the committee to file any objection it may need to
11 file and to prepare for a hearing that may ultimately relate to
12 the value of these properties, Your Honor.

13 MR. FLETCHER: Let me make my position clear. If the
14 committee is objecting to one or more of those items, we would
15 not go forward on that item on March 6th.

16 THE COURT: Well, do you understand what Ms. Mannocho was
17 saying, that it may be too soon for them to even know whether to
18 object, because they don't have the information? Why don't we
19 select a different date? I'm looking on the book to see when we
20 could do this, and it doesn't look like we could do it much
21 sooner than the 16th, which is 10 more days after the 6th, but at
22 least it would be sufficient time, or a little more time to send
23 out a notice on this.

24 I'm concerned about the parties themselves, who are the
25 contracting parties.

1 MR. FLETCHER: Yeah, I just conferred with Ms.s
2 Mannochio, and our suggestion would be to use the following
3 procedure, that if the committee consents if we can get them on
4 board, so that we can stay on our time frame with respect to the
5 sales, that we can submit those consent orders on a one-off basis
6 as soon as an agreement is reached. And then if there is a
7 disputed sale, then we would hear that on the 16th.

8 THE COURT: Why don't we do that, then.

9 MS. MANNOCHIO: That's fine, Your Honor, as long as the
10 committee isn't required to file an objection by the 6th, but
11 simply that if we consent by the 6th, then the sale can go
12 forward, but that if we don't submit a written consent, that that
13 will be deemed sort of disputed until the later hearing date.

14 THE COURT: Is that acceptable to you, Mr. Fletcher?

15 MR. FLETCHER: Yes, it is, Your Honor.

16 THE COURT: Now, let me ask this. How many such contracts
17 are we talking about?

18 MR. FLETCHER: There are, I believe, -- let me get you an
19 exact number.

20 MS. MANNOCHIO: Your Honor, I believe there are six
21 contracts for nine propertie s.

22 MR. FLETCHER: That sounds correct, Your Honor, in terms of
23 the sales.

24 THE COURT: I see. So it's not that many. We're not
25 dealing with hundreds and hundreds of these.

1 MR. FLETCHER: That's correct. It's nine contracts, six
2 buyers.

3 THE COURT: And these are sales of real estate, or what?

4 MR. FLETCHER: Sales of real estate, Your Honor.

5 THE COURT: And some of them are for below-market
6 prices, Mr. Fletcher?

7 MR. FLETCHER: I wouldn't say they're below market. Some of
8 them are below appraised value, but the debtors did engage a
9 national real estate firm to exhaustively market the properties,
10 and we believe we'll be able to demonstrate to the committee's
11 comfort that there has been a full testing of the market.

12 THE COURT: And these are stores? or former stores?

13 MR. FLETCHER: These are stores. Real estate.

14 THE COURT: I see.

15 MR. FLETCHER: And stores that the debtors are closing.

16 THE COURT: I see. Very well.

17 MR. FLETCHER: Now, if I could just clarify for my own mind,
18 here, Your Honor, in terms of the rejections. I know, for
19 example, in one instance we have a landlord who plans to put a
20 new tenant in a facility that we are moving to reject, on the
21 2nd, which is this Friday, and of course we have moved to reject.
22 I don't know if other landlords are going to object to the
23 rejection, but I seek some guidance from the Court as to how we
24 might accelerate the ability to deal with landlords who are not
25 opposing rejection.

1 Perhaps the same mechanism as with the committee, that if
2 the committee and the landlord are not opposing the rejection, we
3 can submit the consent order on those, and just go forward on the
4 16th on whatever ones are opposed.

5 THE COURT: That's fine with me. I'm not going to object to
6 consent orders on these, because that would presuppose proper
7 notice and approval on the part of the interested parties. I
8 don't see any problem with those.

9 MR. FLETCHER: We will put together a form of notice, Your
10 Honor, and circulate it to the committee and then circulate that
11 notice out to the appropriate parties and file a copy with the
12 Clerk's office.

13 THE COURT: Anything else you'd like to say on that, Ms.
14 Mannocho?

15 MS. MANNOCHIO: No, Your Honor, I just want to advise the
16 Court that that procedure sounds acceptable.

17 THE COURT: Very well.

18 MR. FLETCHER: Thank you, Your Honor.

19 The other scheduling item was on Sunterra. as you recall,
20 last week when we were here on exclusivity, we indicated to the
21 Court that the debtors were very close to a new DIP facility.
22 I'm pleased to report that the debtors came to agreement on terms
23 of that facility last night, and that when I get back to the
24 office, I'm supposed to have comments from the DIP lender's
25 lawyers on a motion to approve that DIP facility, which one of

1 the terms is that we will file that motion today, to get approval
2 of that DIP facility.

3 It's a substantial DIP facility, approximately 200 million
4 dollars, and as Your Honor recalls from the Ableco loan, as this
5 exponentially increasing interest rate, that is basically a time
6 bomb in the case. In order to maximize the speed with which we
7 get rid of that troublesome loan and the burdensome interest
8 rates, what the debtors are going to do is file a motion to
9 approve that DIP facility, hopefully today, and a motion to
10 approve a procedure for getting us from asking permission to
11 approve the loan based on a term sheet, to a final approval based
12 upon what I anticipate will be another one of these lengthy DIP
13 financing orders and lengthy agreements.

14 What we're going to be coming to your Chambers and asking
15 for, is for the Court to give us two dates for hearings in
16 connection with that: A final date to approve the new DIP
17 facility, which we're hoping we can get on track for the March
18 15th omnibus hearing, and sometime between today and that
19 date, to approve the procedures.

20 I don't necessarily need those dates now, but I just want to
21 give Your Honor a heads-up that we were likely going to be
22 requesting those very shortly.

23 THE COURT: I'm looking to see what dates are available.
24 There are not too many dates between now and the 15th.

25 MR. FLETCHER: The issue to be decided between those two

1 dates is a procedural issue in terms of approving a break-up
2 fee, approving certain expenses of the new lender, and approving
3 the timing of when the proposed order and proposed loan agreement
4 will be submitted and made public, when objections are due.

5 I don't anticipate that that would be a lengthy hearing,
6 because it's mainly procedural, with the exception of the
7 break-up statement. I don't know how heavy that March 6 date
8 is, but in terms of the items that we have, we could probably
9 squeeze that in.

10 THE COURT: That might be the only date. It doesn't look
11 too good otherwise. That's also the same time as the date that
12 we have set aside for Frank's, and that March 6 date is the date
13 that we're going to hear legal argument on the Finova Capital
14 court motion for summary judgement. But I guess we can fit it in
15 then. It's just one more thing.

16 MR. FLETCHER: In terms of our procedural motion, to try to
17 get notice out on that, would Your Honor prefer that we come to
18 you after we have formally filed the motion? or when we file
19 it, go ahead and send out a notice--?

20 THE COURT: You'd better send out a notice then.

21 MR. FLETCHER: Well, we can get it out by FED-EX and give
22 people a little more notice. So I notice it's 10:00 a.m.
23 stand-by?

24 THE COURT: Yes. We have spent a lot of time on that, but I
25 think that's about the only way we can proceed.

1 MR. FLETCHER: Thank you, Your Honor.

2 THE COURT: Is there anything else we can address?

3 MR. FLETCHER: That's it, Your Honor. You've done quite a
4 bit already. Thank you.

5 THE COURT: Very well. Well, thank you all for attending
6 this morning.

7 MR. FLETCHER: Thank you.

8 MS. MANNOCHIO: Thank you.

9 MS. ALQUIST: Thank you.

10 THE COURT: We will now take a recess.

11 (Court recessed at 11:05 a.m.)

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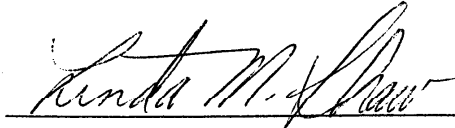
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CERTIFICATION

I, Linda M. Shaw, do hereby certify that the foregoing was transcribed by me, from the electronic sound recording of the proceedings in the above-entitled matter, and is an accurate transcript of what is recorded and audible on the tape.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor in any way interested in the outcome of this action.

A handwritten signature in cursive script, reading "Linda M. Shaw", is written over a horizontal line.

Linda M. Shaw

Signature of Transcriber